

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

SHEILA LOZANO AND SERGIO SOLIS,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 7:15-cv-00185
	§	
ASI LLOYDS, VERICLAIM, INC., AND	§	
ALDO HANZE, JR.,	§	
<i>Defendants.</i>	§	

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants file this Notice of Removal pursuant to 28 U.S.C. §1446(a) and respectfully show the Court the following:

Procedural Background

1. On or about February 26, 2015, Plaintiffs filed Plaintiffs' Original Petition in the matter styled Cause No. C-0832-15-B; *Sheila Lozano and Sergio Solis v. ASI Lloyds, Vericclaim, Inc., and Aldo Hanze, Jr.*; In the 93rd Judicial District Court, Hidalgo County, Texas. ASI Lloyds' registered agent received the citation and petition on March 23, 2015. Defendants' counsel answered on behalf of all Defendants on April 3, 2015. Defendants file this Notice of Removal within the thirty-day time period required by 28 U. S. C. § 1446(b).

2. Attached hereto as Exhibit "A" is the Index of Matters Being Filed. A copy of the Hidalgo County Clerk's file for this case is attached as Exhibit "B", which includes true and correct copies of all executed process, pleadings and orders, and a copy of *Defendants' Original Answer*. Attached hereto as Exhibit "C" is the Designation of Counsel.

Basis for Removal

3. Removal is proper under 28 U.S.C. §1332(a)(1). There is complete diversity of citizenship.

4. Plaintiffs are, and were at the time the lawsuit was filed, citizens of the State of Texas. *See* Plaintiffs' Original Petition, ¶ 2.

5. Defendant, ASI Lloyds was, and at the date of this Notice remains, an association of underwriters. The individual underwriters are as follows: Tanya J. Fjare, Trevor C. Hillier, Kevin R. Milkey, Gregory E. Stewart, John F. Auer, Jr., Robert K. Munns, Jr., Edwin L. Cortez, Mary F. Bacon, Antonio Scognamiglio, and Philip L. Brubaker. Each of these underwriters is a citizen of the State of Florida¹ "The United States Supreme Court has consistently held for over one hundred years that the citizenship of an unincorporated association [such as ASI Lloyds] is determined . . . solely by the citizenship of its members." *See Massey v. State Farm Lloyds Ins. Co.*, 993 F. Supp. 568, 570 (S.D. Tex. 1998); *see also Gore v. Stenson*, 616 F. Supp. 895, 898-899 (S.D. Tex. 1984) (recognizing years of Supreme Court precedent reaffirming the treatment of unincorporated associations for jurisdictional purposes). Accordingly, ASI Lloyds is not a citizen of the State of Texas.

6. Defendant Aldo Hanze, Jr. is, and was at the time the lawsuit was filed, a citizen of the state of Florida. Aldo Hanze, Jr. is a natural person domiciled in the State of Florida.

7. Defendant VeriClaim, Inc. is, and was at the time the lawsuit was filed, a citizen of the states of Delaware and Illinois. Vericclaim, Inc. is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in Naperville, Illinois.

¹ *See Royal Ins. Co. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-884 (5th Cir. 1993), *cert. denied*, 522 U.S. 815 (1997); *see also Bailey, et. al. v. State Farm Lloyds, et. al.*, Civil Action No. H-00-3638, 2001 U.S. Dist. LEXIS 15236, *9 (S.D. Tex. 2001); *Massey*, 993 F. Supp. at 570.

8. In determining the amount in controversy, the court may consider “policy limits... penalties, statutory damages, and punitive damages.” *St. Paul Reinsurance Co., Ltd v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v. State Farm Lloyds*, No. CIV.A.3:98-CV-1288-G, 1999 WL 151667, at * 2-*3 (N.D. Tex. Mar. 10, 1999)(finding a sufficient amount in controversy in plaintiff’s case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int’l Co., et. al.*, 75 F.Supp.2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Insurance Exchange*, 844 F.Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought and the presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

9. The amount in controversy in this case exceeds the jurisdictional requirements of this court. Plaintiffs’ Original Petition clearly states that Plaintiffs seek damages over \$200,000. *See* Plaintiffs’ Original Petition, ¶ 6. This evidence clearly demonstrates that the amount in controversy in this case exceeds the jurisdictional requirements.

The Removal is Procedurally Correct

10. Defendants were first served with the petition on March 23, 2015. Defendants file this Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b).

11. Venue is proper in this district under 28 U.S.C. §1446(a) because this district and division embrace the place in which the removed action has been pending and because a substantial part of the events giving rise to the Plaintiffs’ claim allegedly occurred in this district.

13. Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice.

14. Pursuant to 28 U.S.C. §1446(d), promptly after Defendants file this Notice, written notice of the filing will be given to Plaintiffs, the adverse parties.

15. Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of Hidalgo County, promptly after Defendants file this Notice.

Respectfully submitted,

/s/ Jay Scott Simon
Jay Scott Simon
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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was duly served pursuant to Federal Rules of Civil Procedure on counsel for Plaintiffs, Sheila Lozano and Sergio Solis, by and through their attorney of record, Rene M. Sigman, Mostyn Law Firm, 3810 W. Alabama Street, Houston, Texas 77027, on the 22nd day of April, 2015.

/s/ Jay Scott Simon
Jay Scott Simon